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Jay S. Walker

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EXAMINER

NGUYEN, BINH AN DUC

ART UNIT

PAPER NUMBER

3714

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,167	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> Binh-An D. Nguyen	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 13-17, 29 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 13-17, 29 and 34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/22/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The Request for Consideration filed December 22, 2008 has been approved. Further, the Information Disclosure statement filed December 12, 2008 has been received.

Currently, claims 1-5, 13-17, 29, and 34-36 are pending in the application and will be examined on the merit. Acknowledgment has been made.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

**Claims 29 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Acres et al. (5,655,961).** Should the applicant persuasively overcome the 35 U.S.C. 102(b) date, the claims, alternatively, are also rejected under 35 U.S.C. 102(e).

**Referring to claim 29**, Acres et al. teaches a method comprising: determining revenue received per unit of time from a player playing a wagering game at a gaming device (3:20-26)(e.g., player playing 20 coins over the last 3 minutes, 26:2-10; 28:66-29:8; 21:65-22:3);

determining a magnitude of a multiplier based on the revenue (e.g., using default payout schedule when the player playing less than 20 coins over the last 3 minutes; or reconfigure payout schedule to be a multiple of default schedule when the player playing 20 coins over the last 3 minutes), wherein the multiplier is of a first magnitude for a first revenue and of a second magnitude for a second revenue and further wherein the first revenue is greater than the second revenue and the first magnitude is greater than the second magnitude (35:52-36:4);

determining a base amount for a payout, *e.g., default payout schedule*; calculating the payout by multiplying the base amount by the multiplier (35:57-36:4); and providing the payout to the player (36:2-4; 3:13-36). Note that, the limitations of “the multiplier being of a first magnitude for a first revenue and of a second magnitude for a second revenue, and further, the first revenue is greater than the second revenue and the first magnitude is greater than the second magnitude,” these limitations are inherent from Acres et al.'s teaching of using the default schedule and the reconfigured the payout schedule to be a multiple of default schedule (35:52-36:4; 26:25-35). For

example, the default payout schedule for any coins-in (second revenue) has a multiple of 1 since nothing has been changed; and the multiple of default payout schedule for 20 coins-in over the last 3 minutes (first revenue) has a multiple (more than 1) of the default payout schedule.

**Referring to claim 34**, Acres et al. teaches a method comprises: determining a value indicative of revenue received per unit of time from a player playing a wagering game at a gaming device (3:20-26)(e.g., player playing 20 coins over the last 3 minutes, 26:2-10; 28:66-29:8; 21:65-22:3);

determining a payout based on the value (26:2-10), e.g., using the default payout schedule for a second revenue (less than 20 coins-in over the last 3 minutes) and using a multiple default payout schedule for a second revenue (20 coins-in over the last 3 minutes)(emphasis added);

and providing the payout to the player (36:2-4; 3:13-36; 35:66-36:4); wherein determining the value indicative of revenue received comprises determining a multiplier, (26:25-35; 35:59-61), wherein the multiplier is of a first magnitude (e.g., multiple of default payout schedule, i.e., multiplier greater than 1) if the revenue is a first revenue and the multiplier is of a second magnitude (e.g., default schedule has a multiplier of 1 since nothing has been changed) if the revenue is a second revenue, and wherein the first magnitude is greater than the second magnitude and the first revenue is greater than the second revenue (35:52-36:4), and further wherein determining the payout based on the multiplier comprises determining a base value (e.g., default payout

schedule) for the payout and determining the payout by multiplying the multiplier by the base value (26:25-35; 35:57-36:4).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acres et al. (5,655,961) in view of Liverance (5,370,399).**

**Referring to claim 35**, Acres et al. teaches a method comprising: determining a speed at which a wagering game is being played at a gaming device for each of a plurality of plays (e.g., the speed of playing 20 coins over the last 3 minutes, 26:2-10; 28:66-29:8; 21:65-22:3)(note that, the game system of Acres et al. can also detect games played over periods of time (28:66-29:8; 20:22-28);

determining, based on the speed, a reward to provide to a player participating in the wagering game, e.g., using the default payout schedule for a second revenue (less than 20 coins-in over the last 3 minutes) and using a multiple default payout schedule for a second revenue (20 coins-in over the last 3 minutes)(emphasis added);

and providing the reward to the player for each of the plurality of plays, wherein the benefit reward is determined such that a more beneficial reward is determined and provided to the player if the speed is a first speed that is greater than a second speed.

Note that, regarding the limitation of “the benefit reward is determined such that a more beneficial reward is determined and provided to the player if the speed is a first speed that is greater than a second speed,” this is inherent from Acres et al.’s teaching of using default payout schedule for second speed (games play with less than 20 coins over the last 3 minutes); and using multiple of default payout schedule for first speed (games play with 20 coins over the last 3 minutes).

Acres et al. does not explicitly teach the limitation of determining a speed at which a wagering game is being played, i.e., a number of games being played over a period of time. Liverance, however, teaches a game system and method which detect the frequency of game handle being pulled or the frequency of the coins being inserted in the slot machine to provide the game player game incentives (3:57-62; 7:52-8:53).

Note that, since the game system and method of Acres et al. can also detect games played over a period of time (28:66-29:8; 20:22-28), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Acres et al.’s with Liverance’s teaching of detecting game frequencies to come up with a game system and method that provide game players more game incentives thus encourage more players to play the game and increase casino’s profit.

**Referring to claim 36**, Acres et al. teaches a method comprising: determining a plurality of plays at a gaming device (20:22-28; 28:66-29:8);

calculating a speed of game play (e.g., player playing 20 coins over the last 3 minutes, 26:2-10; 28:66-29:8; 21:65-22:3; 28:66-29:8);

and determining a pay schedule for each of the plurality of plays based on the calculated speed of game play, e.g., using the default payout schedule for a second revenue (less than 20 coins-in over the last 3 minutes) and using a multiple default payout schedule for a second revenue (20 coins-in over the last 3 minutes)(emphasis added); wherein a player payout percentage defined by the determined pay schedule for each of the plurality of plays is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed. Note that, regarding the limitation of “a player payout percentage defined by the determined pay schedule for each of the plurality of plays is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed,” this is inherent from Acres et al.’s teaching of using default payout schedule for second speed (games play with less than 20 coins over the last 3 minutes); and using multiple of default payout schedule for first speed (games play with 20 coins over the last 3 minutes).

Acres et al. does not explicitly teach the limitation of calculating a speed of game play for each of the plurality of plays based on a number of plays per unit time. Liverance, however, teaches a game system and method which detect the frequency of game handle being pulled or the frequency of the coins being inserted in the slot machine to provide the game player game incentives (3:57-62; 7:52-8:53). Note that, since the game system and method of Acres et al. can also detect games played over a period of time (28:66-29:8; 20:22-28), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Acres et al.’s with



Liverance's teaching of detecting game frequencies to come up with a game system and method that provide game players more game incentives thus encourage more players to play the game and increase casino's profit.

**Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Acres et al. (5,655,961) in view of Liverance (5,370,399), and further in view of Seelig et al. (5,560,603), hereafter '603. Note that, '603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.**

**Referring to claim 1**, Acres et al. teaches a method comprising:

determining a plurality of plays at a gaming device (28:66-29:8; 20:22-28);

calculating a speed of game play for each of the plurality of plays based on a number of plays per unit time, (e.g., the speed of playing 20 coins over the last 3 minutes, 26:2-10; 28:66-29:8; 21:65-22:3)(note that, the game system of Acres et al. can also detect games played over periods of time (28:66-29:8; 20:22-28);

determining a pay schedule for each of the plurality of plays based on the calculated speed of game play, e.g., using the default payout schedule for a second revenue (less than 20 coins-in over the last 3 minutes) and using a multiple default payout schedule for a second revenue (20 coins-in over the last 3 minutes)(emphasis added); wherein a player payout percentage defined by the determined pay schedule for each of the plurality of plays is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed. Note

that, regarding the limitation of “a player payout percentage defined by the determined pay schedule for each of the plurality of plays is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed,” this is inherent from Acres et al.’s teaching of using default payout schedule for second speed (games play with less than 20 coins over the last 3 minutes); and using multiple of default payout schedule for first speed (games play with 20 coins over the last 3 minutes).

Acres et al. does not explicitly teach the limitation of calculating a speed of game play for each of the plurality of plays based on a number of plays per unit time. Liverance, however, teaches a game system and method which detect the frequency of game handle being pulled or the frequency of the coins being inserted in the slot machine to provide the game player game incentives (3:57-62; 7:52-8:53). Note that, since the game system and method of Acres et al. can also detect games played over a period of time (28:66-29:8; 20:22-28), it would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Acres et al.’s with Liverance’s teaching of detecting game frequencies to come up with a game system and method that provide game players more game incentives thus encourage more players to play the game and increase casino’s profit.

Further, Acres et al. and Liverance do not teach the limitation of displaying a racing object having a position which changes based on the calculated speed of game play. Seelig et al., however, teaches a game system and method wherein a car or a horse moves a unit of distance for each coin played over a predetermined time period

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before the clock timed out (3:5-12); the faster the handle pull (or faster coins spent on the machine) the faster the car or horse advances from the starting position over a distance toward the winning positions ("Show" and "Place"), and ultimately the finish line ("Win")(2:9-13; 4:16-19). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Seelig et al.'s racing game to the game system and method of providing incentives for speed based game, as taught by Acres et al. and Liverance, to come up with a more dynamic game method that enhance game excitements thus encourage game players playing games faster and at the same time increase casino's revenue.

**Referring to claim 2**, Liverance teaches calculating the speed of game play based on a number of plays which have occurred since a predefined amount of time **(3:57-62; 7:52-8:53)**.

**Referring to claim 3**, Liverance teaches the speed of game play based on a predetermined number of plays **(3:57-62; 7:52-8:53)**.

**Referring to claim 4**, Acres et al. teaches providing a payout based on at least the determined pay schedule (26:2-10; 28:66-29:8; 21:65-22:3).

**Referring to claim 5**, Seelig et al. '603 teaches calculating a running count based on the speed of game play; and providing a payout based on at least the running

count, e.g., *different prizes offered to the horse reaching certain win line position (Win, Place, or Show) within a set of time (3:56-4:7).*

**Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liverance (5,370,399) in view of Seelig et al. (5,560,603), hereafter '603.** Note that, '603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.

**Referring to claim 13**, Liverance teaches a system and method comprising: receiving payment for a predetermined number of slot machine outcomes, e.g., a 5-coin machine generates five games outcomes (16:28-17:33);

generating the predetermined number of slot machine outcomes, each outcome corresponding to a speed value (3:54-68).

Liverance does not teach displaying a racing object having a position which changes based on the speed value. Seelig et al., however, teaches a method comprising displaying a racing object having a position which changes based on the speed value (Fig.3, 2:61-3:4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Seelig et al.'s racing game to the game system and method of providing incentives for response time based game, as taught by Liverance, to come up with a more dynamic game method that enhance game excitements thus encourage game players playing games faster and increase casino's revenue.

**Referring to claim 14**, Seelig et al. '603 teaches providing a payout based on at least the speed value, *e.g., awarding different prizes to the horse reaching certain win line position (Win, Place, or Show) within a set of time (3:56-4:7).*

**Referring to claim 15**, Seelig et al. '603 teaches providing a payout based on at least the position, *e.g., awarding different prizes to the horse reaching certain win line position such as Win, Place, or Show (Fig.3, 3:56-4:7).*

Regarding the limitation of calculating an average speed; and providing a payout based on at least the average speed (claim 16), this limitation is inherent from Seelig et al. '603 teaching of speed calculation of the horse or car reaching a certain win line such as Show, Place, or Win at certain time period before the timer run out of time.

Regarding the limitation of generating a respective slot machine outcome for each one of a plurality of player commands (claim 17), this limitation is inherent from the response of slot machine of Seelig et al. '603 to the player's game commands such as pulling the handle 24 or depressing the button 26 (3:3:53-63).

**Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al. (6,695,700) or Walker et al.(6,238,288) in view of Seelig et al. (5,560,603), hereafter '603. Note that, '603 is a continuation-in-part of Seelig et al.**

(5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.

**Referring to claims 1**, Walker et al.(6,695,700) (or 6,238,288) discloses all limitations (see claims 49-51 of Walker et al. 6,695,700; or claims 1, 11, 21, 23, 25, 35, and 45 of 6,238,288) **except** determining a plurality of plays at a gaming machine; displaying a racing object having a position which changes based on the calculated speed of game play. Seelig et al. '603, however, teaches determining a plurality of plays at a gaming machine, e.g., game plays that control the horse or car (Fig.3); displaying a racing object having a position which changes based on the calculated speed of game play (Fig.3, 2:61-3:4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the racing objects to Walker et al.(6,695,700) (or 6,238,288) to provide an attractive bonus game method to casino games thus attracts more racing sports lovers to the game and increase casino's revenue.

**Referring to claim 2**, Seelig et al. '603 teaches calculating the speed of game play based on a number of plays which have occurred since a predefined amount of time (3:5-12).

**Referring to claim 3**, Seelig et al. '998 teaches the speed of game play based on a predetermined number of plays ('998's 3:61-63).

**Referring to claim 4**, Seelig et al. '603 teaches providing a payout based on at least the determined pay schedule *e.g., awarding different prizes to the horse reaching certain win line position (Win, Place, or Show) within a set of time* (3:56-4:7).

**Referring to claim 5**, Seelig et al. '603 teaches calculating a running count based on the speed of game play; and providing a payout based on at least the running count *different prizes offered to the horse reaching certain win line position (Win, Place, or Show) within a set of time (3:56-4:7)*.

**Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.(6,695,700) or Walker et al.(6,238,288) in view of Liverance (5,370,399) and further in view of Seelig et al. (5,560,603), hereafter '603.** Note that, '603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.

**Referring to claim 13**, Walker et al.(6,695,700) (or 6,238,288) discloses all limitations (see claims 49-51 of U.S. Patent No. 6,695,700; or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) **except** receiving payment for a predetermined number of slot machine outcomes. Liverance, however, teaches a system and method comprising: receiving payment for a predetermined number of slot machine outcomes, e.g., a 5-coin machine generates five games outcomes (16:28-17:33). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Walker et al.'s with Liverance's prepaid multiple game outcomes to come up with a game method that provides game players more chances to win game thus encourage more players to play the game and increase casino's revenue.

Walker et al. and Liverance do not teach displaying a racing object having a position which changes based on the speed value. Seelig et al., however, teaches a

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method comprising displaying a racing object having a position which changes based on the speed value (Fig.3, 2:61-3:4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Seelig et al.'s racing game to the method of Walker et al. and Liverance, to come up with a more dynamic game method that enhance game excitements thus encourage game players playing games faster and increase casino's revenue.

Referring to claim 14, Seelig et al. '603 teaches providing a payout based on at least the speed value, *e.g., awarding different prizes to the horse reaching certain win line position (Win, Place, or Show) within a set of time (3:56-4:7).*

Referring to claim 15, Seelig et al. '603 teaches providing a payout based on at least the position, *e.g., awarding different prizes to the horse reaching certain win line position such as Win, Place, or Show (Fig.3, 3:56-4:7).*

Regarding the limitation of calculating an average speed; and providing a payout based on at least the average speed (claim 16), this limitation is inherent from Seelig et al. '603 teaching of speed calculation of the horse or car reaching a certain win line such as Show, Place, or Win at certain time period before the timer run out of time.

Regarding the limitation of generating a respective slot machine outcome for each one of a plurality of player commands (claim 17), this limitation is inherent from the response of slot machine of Seelig et al. '603 to the player's game commands such as pulling the handle 24 or depressing the button 26 (3:3:53-63).



**Claims 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.(6,695,700) or Walker et al.(6,238,288).**

**Referring to claim 35**, U.S. Walker et al. (6,695,700) or (6,238,288) disclosed all limitations except providing the reward to the player, wherein the benefit is determined such that a more beneficial reward is determined and provided to the player if the speed is a first speed that is greater than a second speed. However, it would have been obvious to a person of ordinary skill in the art would recognize that the reward being generated is intended to be provided to a game player. Further, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to recognize that the claimed limitation of “wherein a player payout percentage defined by the determined pay schedule is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed” (claim 1 of Patent No. 6,238,288) or “wherein a payout per outcome defined by the determined pay schedule is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed” (claim 49 of U.S. Patent No. 6,695,700) would result in that the greater payout percentage or schedule would be a more beneficial reward to the player.

**Referring to claim 36**, Referring to claim 35, U.S. Walker et al. (6,695,700) or (6,238,288) disclosed all limitations except determining a plurality of plays at a gaming device. However, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to recognize that a plurality of plays at a gaming device has been determined from the claimed limitation such as “calculating a speed of game

play based on a number of plays per unit of time (claim 1 of Patent No. 6,238,288) or (claim 49 of U.S. Patent No. 6,695,700).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1-5, are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 49-51 of U.S. Patent No. 6,695,700 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) in view of Seelig et al. (5,560,603), hereafter ‘603. Note that, ‘603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter ‘998; therefore, the disclosure of ‘998 is considered herein as part of the ‘603’s disclosure.**

**Referring to claims 1**, U.S. Patent No. 6,695,700's claims 49-51 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) claimed all limitations **except** displaying a racing object having a position which changes based on the calculated speed of game play. Seelig et al. '603, however, teaches displaying a racing object having a position which changes based on the calculated speed of game play (Fig.3, 2:61-3:4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the racing objects to claims 49-51 of U.S. Patent No. 6,695,700 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) to provide an attractive bonus game method to casino games thus attracts more racing sports lovers to the game and increase casino's revenue.

**Referring to claim 2**, Seelig et al. '603 teaches calculating the speed of game play based on a number of plays which have occurred since a predefined amount of time (3:5-12).

**Referring to claim 3**, Seelig et al. '998 teaches the speed of game play based on a predetermined number of plays ('998's 3:61-63).

**Referring to claim 4**, Seelig et al. '603 teaches providing a payout based on at least the determined pay schedule *e.g., awarding different prizes to the horse reaching certain win line position (Win, Place, or Show) within a set of time* (3:56-4:7).

**Referring to claim 5**, Seelig et al. '603 teaches calculating a running count based on the speed of game play; and providing a payout based on at least the running count *different prizes offered to the horse reaching certain win line position (Win, Place, or Show) within a set of time* (3:56-4:7).

**Claims 13-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 49-51 of U.S. Patent No. 6,695,700 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) in view of Liverance (5,370,399) and further in view of Seelig et al. (5,560,603), hereafter '603. Note that, '603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.**

**Claims 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker et al.(6,695,700) or Walker et al.(6,238,288) in view of Liverance (5,370,399) and further in view of Seelig et al. (5,560,603), hereafter '603. Note that, '603 is a continuation-in-part of Seelig et al. (5,664,998), hereafter '998; therefore, the disclosure of '998 is considered herein as part of the '603's disclosure.**

**Referring to claim 13**, Walker et al.(6,695,700) (or 6,238,288) claimed all limitations of claim 13 (see claims 49-51 of U.S. Patent No. 6,695,700; or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) **except** receiving payment for a predetermined number of slot machine outcomes. Liverance, however, teaches a system and method comprising: receiving payment for a predetermined number of slot machine outcomes, e.g., a 5-coin machine generates five games outcomes (16:28-17:33). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Walker et al.'s with Liverance's prepaid multiple game outcomes to come up with a game method that provides game players more chances to

win game thus encourage more players to play the game and increase casino's revenue.

Walker et al. and Liverance do not teach displaying a racing object having a position which changes based on the speed value. Seelig et al., however, teaches a method comprising displaying a racing object having a position which changes based on the speed value (Fig.3, 2:61-3:4). It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine Seelig et al.'s racing game to the method of Walker et al. and Liverance, to come up with a more dynamic game method that enhance game excitements thus encourage game players playing games faster and increase casino's revenue.

**Referring to claim 14**, Seelig et al. '603 teaches providing a payout based on at least the speed value, *e.g., awarding different prizes to the horse reaching certain win line position (Win, Place, or Show) within a set of time (3:56-4:7).*

**Referring to claim 15**, Seelig et al. '603 teaches providing a payout based on at least the position, *e.g., awarding different prizes to the horse reaching certain win line position such as Win, Place, or Show (Fig.3, 3:56-4:7).*

Regarding the limitation of calculating an average speed; and providing a payout based on at least the average speed (claim 16), this limitation is inherent from Seelig et al. '603 teaching of speed calculation of the horse or car reaching a certain win line such as Show, Place, or Win at certain time period before the timer run out of time.

Regarding the limitation of generating a respective slot machine outcome for each one of a plurality of player commands (claim 17), this limitation is inherent from the

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response of slot machine of Seelig et al. '603 to the player's game commands such as pulling the handle 24 or depressing the button 26 (3:3:53-63).

**Claims 35 and 36 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 49-51 of U.S. Patent No. 6,695,700 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) in view of one of ordinary skill in the art.** Although the conflicting claims are not identical, they are not patentably distinct from each other because:

**Referring to claim 35**, U.S. Patent No. 6,695,700's claims 49-51 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) claimed all limitations except providing the reward to the player, wherein the benefit is determined such that a more beneficial reward is determined and provided to the player if the speed is a first speed that is greater than a second speed. However, it would have been obvious to a person of ordinary skill in the art to recognize that the reward being generated is intended to be provided to a game player. Further, it would have been obvious to a person of ordinary skill in the art to recognize that the claimed limitation of "wherein a player payout percentage defined by the determined pay schedule is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed" (claim 1 of Patent No. 6,238,288) or "wherein a payout per outcome defined by the determined pay schedule is greater for a first speed of game play than for a second speed of game play, the first speed being greater than the second speed"

(claim 49 of U.S. Patent No. 6,695,700) would result in that the greater payout percentage or schedule would be a more beneficial reward to the player.

**Referring to claim 36**, U.S. Patent No. 6,695,700's claims 49-51 (or claims 1, 11, 21, 23, 25, 35, and 45 of Patent No. 6,238,288) claimed all limitations except determining a plurality of plays at a gaming device. However, it would have been obvious to a person of ordinary skill in the art to recognize that a plurality of plays at a gaming device has been determined from the claimed limitation such as "calculating a speed of game play based on a number of plays per unit of time (claim 1 of Patent No. 6,238,288) or (claim 49 of U.S. Patent No. 6,695,700).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Binh-An D. Nguyen whose telephone number is 571-272-4440. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Dmitry Suhol/  
Supervisory Patent Examiner, Art  
Unit 3714

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